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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK
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3 JULIUS KLEIN DIAMONDS, LLC,

4 Plaintiff,

5 v.

12 CV 6644 (RPP)

6 GEMOLOGICAL INSTITUTE OF
7 AMERICA, INC. and TAT KEUNG
8 YEE,

9 Defendants.
-----x

10 New York, N.Y.
11 September 5, 2012
12 2:50 p.m.

13 Before:

14 HON. ROBERT P. PATTERSON, JR.,

15 District Judge

16 APPEARANCES

17 SKADDEN, ARPS, SLATE, MEAGHER & FLOM

18 Attorneys for Plaintiff

19 BY: JEROME J. LAWTON

20 DLA PIPER US LLP

21 Attorneys for Defendant GIA

22 BY: CAPRICCI G. BARUSH
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(Case called)

MR. LAWTON: Good afternoon, your Honor. I am counsel for plaintiff, Julius Klein Diamonds.

THE COURT: Good afternoon. Let me get the other appearance.

MS. BARUSH: Your Honor, my name is Capricci Barush, and I am counsel for the Gemological Institute of America, one of the defendants in this case.

THE COURT: All right. Go ahead, Mr. Lawton.

MR. LAWTON: Thank you, your Honor.

Judge Gardephe's order setting this hearing required the service and filing by August 31 to any opposition of plaintiff's application for an order enjoining the Gemological Institute of America from releasing a specific 3.08 carat diamond in its possession until this Court can determine the rightful ownership of that diamond.

To date, your Honor, I understand that no opposition has been filed or served. Accordingly, your Honor, I have a proposed order that enjoins GIA, the Gemological Institute of America, from releasing the diamond until the Court can hear and determine the rightful ownership of that diamond and order its return to the rightful owner.

MS. BARUSH: Your Honor, GIA does not contest the TRO, and it is willing to hold the diamond until such time as the Court determines the true ownership of the diamond.

1 As you may see from the papers filed by Mr. Lawton,
2 GIA is simply a stakeholder in this matter. On or about August
3 20, it received from its Hong Kong laboratory a 3.08 diamond
4 submitted by a client named Tat Keung Yee, and once it was
5 submitted GIA gemologists determined that it was the same or
6 similar to the characteristics of a diamond that was previously
7 submitted by Mr. Lawton's client, and we immediately advised
8 the parties as to their competing claims of ownership.

9 THE COURT: You have advised Mr. Yee?

10 MS. BARUSH: That's correct, your Honor. We sent a
11 letter to Mr. Yee. From what we understand, he resides in Hong
12 Kong. He has threatened litigation against both GIA and
13 Mr. Lawton's client if we do not return the diamond, and we
14 simply asserted our position that if he wanted to assert his
15 claim to the diamond then he ought to litigate the case here in
16 New York.

17 My understanding as well is that the diamond is being
18 transferred from GIA's Hong Kong laboratory to its New York
19 office for safekeeping.

20 THE COURT: Have you seen Mr. Lawton's order?

21 MS. BARUSH: I have not, your Honor.

22 THE COURT: Why don't you look at that and see if
23 there is anything the matter with it because it sounds to me as
24 if he's trying to accomplish just what you are suggesting.

25 Take your time.

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1 MS. BARUSH: Your Honor, I have reviewed the Court's
2 order and I have no corrections or changes to it.

3 THE COURT: All right.

4 MR. LAWTON: May I approach, your Honor.

5 THE COURT: Yes. I'll sign the order and Mr. Lawton
6 will be able to keep his client happy for a moment.

7 MR. LAWTON: Thank you, your Honor.

8 THE COURT: I've signed the order.

9 By any chance, did Mr. Yee indicate whether he'd
10 received the papers from the plaintiff? In his letters to you,
11 did he indicate that he'd been served by the plaintiff?

12 MS. BARUSH: Your Honor, our last, GIA's last
13 communication with Mr. Yee, he has not apprised us whether or
14 not he's received service of the TRO papers served by
15 Mr. Lawton.

16 MR. LAWTON: Your Honor, we have proof of service on
17 Mr. Yee. I'd be pleased to hand it up to the Court.

18 THE COURT: Do you have an affidavit, not just by
19 mail, but that he personally received papers?

20 MR. LAWTON: We can provide proof of service by
21 Federal Express and by e-mail, both, your Honor.

22 THE COURT: To which you've gotten acknowledgement?

23 MR. LAWTON: Yes, your Honor.

24 THE COURT: Fine. Maybe we'll hear from Mr. Yee.

25 What do you want me to do in terms of the next

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1 conference?

2 MR. LAWTON: We hope so, your Honor, because there are
3 several other diamonds that have disappeared over there, and we
4 are hopeful that Mr. Yee may be a vehicle by which we can
5 locate those diamonds.

6 THE COURT: But what date would you want? It does
7 seem to me that we want a date for Mr. Yee to appear here, by
8 lawyer or whatever. This may hold things, but you want to have
9 a date scheduled. I don't like to just leave a case and not
10 have a date when either you adjourn it or not.

11 What do you want, 30 days, or something like that?

12 MR. LAWTON: 30 days would make a lot of sense, your
13 Honor. Thank you. We'll do our utmost in the interim to
14 communicate with Mr. Yee and his counsel.

15 THE COURT: If you want an earlier date, let me know.

16 MR. LAWTON: We will do that, your Honor.

17 THE COURT: Or if you want to put it over.

18 MR. LAWTON: Thank you, your Honor.

19 MS. BARUSH: Thank you, your Honor.

20 THE COURT: Let me make sure it's not a Saturday or
21 Sunday. 30 days is October 5.

22 MR. LAWTON: That's fine, your Honor.

23 THE COURT: 9:30 in the morning.

24 MR. LAWTON: That's fine.

25 THE COURT: All right.

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1 MS. BARUSH: That's fine, your Honor. Thank you.

2 THE COURT: I'll put it over to 9:30 in the morning,
3 October 5.

4 MR. LAWTON: Thank you very much.

5 THE COURT: And one of us will remember.

6 MR. LAWTON: Thank you.

7 MS. BARUSH: Thank you.

8 (Proceedings adjourned)

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